

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 781

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mary Jane M. Garcia

AN ACT

RELATING TO ELECTIONS; RESTRICTING ABSENTEE VOTING; CHANGING
THE HOURS FOR EARLY VOTING; PROVIDING PROCEDURES FOR VOTER
ASSISTANCE; PRESCRIBING PENALTIES; AMENDING AND ENACTING
SECTIONS OF THE ELECTION CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-6-3 NMSA 1978 (being Laws 1969,
Chapter 240, Section 129, as amended) is amended to read:

"1-6-3. RIGHT TO VOTE BY ABSENTEE BALLOTS. --

~~[A. Any voter may vote by absentee ballot for all
candidates and on all questions appearing on the ballot as if
he were able to cast his ballot in person at his regular
polling place on election day.]~~

A. A voter may vote by absentee ballot for all
candidates and on all statewide questions appearing on the

underscored material = new
[bracketed material] = delete

1 ballot at the voter's precinct poll as if the voter were able
2 to cast the ballot in person at the precinct poll if the voter:

3 (1) cannot be present at the precinct poll on
4 election day, because of illness, injury or disability;

5 (2) will be absent from his county of
6 residence because his duties, occupation, business or vacation
7 requires him to be elsewhere; or

8 (3) cannot be present at the precinct poll
9 because he is a prisoner in a jail, detention home or
10 penitentiary and has not been convicted of a felony.

11 B. ~~[Any]~~ A federal qualified elector may register
12 absentee and vote by an absentee ballot for any federal
13 office. "

14 Section 2. Section 1-6-4 NMSA 1978 (being Laws 1969,
15 Chapter 240, Section 130, as amended) is amended to read:

16 "1-6-4. ABSENTEE BALLOT APPLICATION. --

17 A. Application by a federal qualified elector for
18 an absentee ballot shall be made on the official postcard form
19 prescribed or authorized by the federal government to the
20 county clerk of the county of his residence.

21 B. Application by a voter for an absentee ballot
22 shall be made only on a form prescribed, printed and furnished
23 by the secretary of state to the county clerk of the county in
24 which the voter resides. The form shall identify the applicant
25 and contain information to establish his qualification for

. 145427. 1

underscored material = new
[bracketed material] = delete

1 issuance of an absentee ballot under the Absent Voter Act;
2 provided that on the application form for a general election
3 ballot there shall be no box, space or place provided for
4 designation of the voter's political party affiliation.

5 Only the county clerk shall mail an application to a voter.

6 The county clerk shall not mail applications to a permanent
7 class of voters.

8 C. The secretary of state shall make a universal,
9 downloadable absentee ballot application form available on-
10 line. A person may distribute an application to a voter or
11 return an application to the county clerk for a voter. Each
12 application for an absentee ballot shall be subscribed by the
13 applicant.

14 D. An application form for an absentee ballot shall
15 include spaces for the applicant to indicate by check mark the
16 reason the voter qualifies for an absentee ballot. The county
17 clerk shall not send an absentee ballot to a voter who does not
18 subscribe the application and indicate the reason that the
19 voter qualifies for an absentee ballot."

20 Section 3. Section 1-6-5 NMSA 1978 (being Laws 1969,
21 Chapter 240, Section 131, as amended by Laws 2001, Chapter 49,
22 Section 1 and by Laws 2001, Chapter 58, Section 1) is amended
23 to read:

24 "1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT--
25 MARKING AND DELIVERY OF BALLOT IN PERSON.--

. 145427. 1

underscored material = new
[bracketed material] = delete

1 A. The county clerk shall mark each completed
2 absentee ballot application with the date and time of receipt
3 in the clerk's office and enter the required information in the
4 absentee ballot register. The county clerk shall then
5 determine if the applicant is a voter, an absent uniformed
6 services voter or an overseas voter.

7 B. If the applicant [~~has not~~] does not have a valid
8 certificate of registration on file in the county and he is not
9 a federal qualified elector or if the applicant states he is a
10 federal qualified elector but his application indicates he is
11 not a federal qualified elector, [~~not~~] an absentee ballot shall
12 not be issued and the county clerk shall mark the application
13 "rejected" and file the application in a separate file from
14 those accepted.

15 C. The county clerk shall notify in writing each
16 applicant of the fact of acceptance or rejection of his
17 application and, if rejected, shall explain why the application
18 was rejected.

19 D. If the county clerk finds that the applicant is
20 a voter [~~or~~] other than a federal qualified elector or overseas
21 voter, the county clerk shall mark the application "accepted"
22 and, beginning twenty-five days before the election, deliver an
23 absentee ballot to the voter in the county clerk's office or
24 mail to the applicant an absentee ballot and the required
25 envelopes for use in returning the ballot. If the county clerk

underscored material = new
[bracketed material] = delete

1 finds that the applicant is a federal qualified elector or
2 overseas voter, the county clerk shall mark the application
3 "accepted" and beginning forty-five days before the election,
4 mail to the applicant an absentee ballot and the required
5 envelopes for use in returning the ballot. Acceptance of an
6 application of a federal qualified elector constitutes
7 registration for the election in which the ballot is to be
8 cast. Acceptance of an application from an overseas voter who
9 is not an absent uniformed services voter constitutes a request
10 for changing information on the certificate of registration of
11 any such voter. [~~No~~] An absent voter shall not be permitted to
12 change his party affiliation during those periods when change
13 of party affiliation is prohibited by the Election Code. Upon
14 delivery of an absentee ballot to a voter in the county clerk's
15 office or mailing of an absentee ballot to an applicant who is
16 a voter, an appropriate designation shall be made on the
17 signature line of the signature roster next to the name of the
18 voter who has been provided or mailed an absentee ballot.

19 E. If an application for an absentee ballot is
20 delivered in person to the county clerk and is accepted, the
21 county clerk shall provide the voter an absentee ballot and it
22 shall be marked by the applicant in a voting booth of a type
23 prescribed by the secretary of state, sealed in the proper
24 envelopes and otherwise properly executed and returned to the
25 county clerk or his authorized representative before the voter

. 145427. 1

underscored material = new
[bracketed material] = delete

1 leaves the office of the county clerk. The act of marking the
2 absentee ballot in the office of the county clerk shall be a
3 convenience to the voter in the delivery of the absentee ballot
4 and does not make the office of the county clerk a polling
5 place subject to the requirements of a polling place in the
6 Election Code other than is provided in this subsection. It
7 shall be unlawful to solicit votes, display or otherwise make
8 accessible any posters, signs or other forms of campaign
9 literature whatsoever in the clerk's office. Absentee ballots
10 may be marked in person [~~during the regular hours and days of~~
11 ~~business~~] at the county clerk's office from [~~8:00 a.m.~~] 7:30
12 a.m. to 7:30 p.m. each day, except Sundays, beginning on the
13 [~~fortieth~~] tenth day preceding the election up until [~~5:00~~
14 ~~p.m.~~] 7:30 p.m. on the Saturday immediately prior to the date
15 of the election. In marking the absentee ballot, the voter,
16 pursuant to the provisions of Section 1-12-15 NMSA 1978, may be
17 assisted by one person of the voter's choice.

18 F. Commencing with the [~~twentieth~~] tenth day prior
19 to an election, an absent voter may vote in person, on an
20 electronic voting machine at the county clerk's office or at an
21 alternate location established by the county clerk [~~provided, a~~
22 ~~county clerk may allow an absent voter to vote on an electronic~~
23 ~~voting machine beginning on the fortieth day before an~~
24 ~~election~~]. In class A counties, the county clerk shall
25 establish not less than four alternate voting locations as a

. 145427. 1

underscored material = new
[bracketed material] = delete

1 convenience to the voters. Absentee voting may be done at the
2 county clerk's office or an alternate location [~~during the~~
3 ~~regular hours of business from 8:00 a.m. on the twentieth day~~
4 ~~prior to the election until 5:00 p.m. on~~] from 7:30 a.m. to
5 7:30 p.m., each day, except Sundays, beginning ten days before
6 the election through the Saturday immediately prior to the
7 election. The county clerk shall ensure that procedures
8 established for processing an absent voter application and for
9 voting by absentee ballot are complied with at each
10 [~~alternative~~] alternate location.

11 G. Absentee ballots shall be [~~air-mailed~~] airmailed
12 to applicants temporarily domiciled inside or outside the
13 continental limits of the United States not later than on the
14 Thursday immediately prior to the date of the election.

15 H. [~~No~~] An absentee ballot shall not be delivered
16 or mailed by the county clerk to any person other than the
17 applicant for such ballot.

18 I. The county clerk shall accept and process, with
19 respect to a primary or general election for any federal
20 office, any otherwise valid voter registration application from
21 an absent uniformed services voter or overseas voter if the
22 application is received not less than thirty days before the
23 election. The county clerk shall also accept and process
24 federal write-in absentee ballots from overseas voters in
25 general elections for federal offices in accordance with the

. 145427. 1

underscored material = new
[bracketed material] = delete

1 provisions of Section 103 of the federal Uniformed and Overseas
2 Citizens Absentee Voting Act.

3 J. The secretary of state and each county clerk
4 shall make reasonable efforts to publicize and inform voters of
5 the times and locations for absentee voting. "

6 Section 4. Section 1-6-6 NMSA 1978 (being Laws 1969,
7 Chapter 240, Section 132, as amended) is amended to read:

8 "1-6-6. ABSENTEE BALLOT REGISTER. --

9 A. For each election, the county clerk shall keep
10 an "absentee ballot register", in which he shall enter:

11 (1) the name and address of each absentee
12 ballot applicant;

13 (2) the date and time of receipt of the
14 application;

15 (3) whether the application was accepted or
16 rejected;

17 (4) the date of issue of an absentee ballot in
18 the county clerk's office or at an alternate location or the
19 mailing of an absentee ballot to the applicant;

20 (5) the applicant's precinct;

21 (6) whether the applicant is a voter, a
22 federal voter, a federal qualified elector or an overseas
23 [citizen] voter; and

24 (7) the date and time the completed absentee
25 ballot was received from the applicant by the county clerk or

underscored material = new
[bracketed material] = delete

1 the absent voter voted early in person in the county clerk's
2 office or at an alternate location.

3 B. [~~Within twenty-four hours~~] After receipt of a
4 voter's application for an absentee ballot, the county clerk
5 shall mail either the ballot, if it is within twenty-five days
6 of election day or within forty-five days of election day in
7 the case of a federal qualified elector or overseas voter, or a
8 notice of rejection to the applicant within twenty-four hours
9 of receipt.

10 C. The absentee ballot register is a public record
11 open to public inspection in the county clerk's office during
12 regular office hours. The county clerk shall have an updated
13 absentee ballot register available for public inspection Monday
14 through Friday during regular office hours.

15 D. The county clerk shall deliver to the absent
16 voter precinct on election day a complete list of all absentee
17 ballot applicants and early voters with applicable information
18 shown in the absentee ballot register for each applicant and
19 early voter up to [~~5:00 p.m.~~] 7:30 p.m. on the [~~Thursday~~]
20 Saturday preceding the election. The county clerk shall
21 deliver a signature roster containing the same information as
22 the lists to the absent voter precinct board.

23 E. The county clerk shall transmit to the secretary
24 of state and to the county chairman of each of the major
25 political parties in the county a complete copy of entries made

underscored material = new
[bracketed material] = delete

1 in the absentee ballot register. Such transmissions shall be
2 made once each week beginning four weeks immediately prior to
3 the election. A final copy shall be transmitted on the
4 [~~Friday~~] Saturday immediately following the election. "

5 Section 5. A new section of the Absent Voter Act is
6 enacted to read:

7 " [NEW MATERIAL] ABSENTEE BALLOT--ASSISTING A VOTER. --

8 A. An absentee voter requiring assistance in voting
9 may be assisted in accordance with the provisions of Section
10 1-12-15 NMSA 1978 and shall sign a statement that the voter
11 meets at least one of the conditions for receiving such
12 assistance as set forth by the provisions of Section 1-12-12
13 NMSA 1978. The person assisting the absentee voter, if other
14 than an election official or a person assisting voters pursuant
15 to a federal voting rights consent decree, shall also sign a
16 statement indicating that the person has not assisted more than
17 three voters in that election.

18 B. It is a fourth degree felony for a person
19 assisting an absentee voter to not follow the instructions of
20 the voter or attempt to influence the voter to vote in a
21 particular manner or for a particular candidate.

22 C. It is a fourth degree felony for a person other
23 than an absentee voter to handle or mark an unsealed absentee
24 ballot if that person is not legally assisting the voter or is
25 an election official handling the ballot during canvassing. "

underscored material = new
[bracketed material] = delete

1 Section 6. A new section of the Absent Voter Act is
2 enacted to read:

3 "[NEW MATERIAL] ABSENTEE BALLOT--DELIVERY TO COUNTY
4 CLERK.--A person may deliver an absentee ballot to the county
5 clerk in person or by mail. If a person other than an absentee
6 voter takes possession of the voter's absentee ballot, that
7 person shall deliver or mail the ballot to the county clerk
8 within twenty-four hours of taking possession, unless the
9 person takes possession within twenty-four hours of a weekend,
10 in which case the ballot shall be delivered the following
11 Monday. The person taking possession shall sign his name on
12 the outer mailing envelope of the ballot attesting that the
13 ballot was sealed before the person took possession and the
14 ballot was delivered or mailed within the allowed time period."

15 Section 7. Section 1-12-15 NMSA 1978 (being Laws 1969,
16 Chapter 240, Section 267, as amended) is amended to read:

17 "1-12-15. CONDUCT OF ELECTION--PERSONS WHO MAY ASSIST
18 VOTER.--In any primary, general or statewide special election,
19 if a voter who has requested assistance in marking his ballot
20 is [~~blind~~] visually impaired, has a physical disability, has an
21 inability to read or write or is a member of a language
22 minority who has requested assistance pursuant to Subsection D
23 of Section 1-12-12 NMSA 1978, he may be accompanied into the
24 voting machine [~~only~~] by:

25 A. a person of his own choice other than the

. 145427. 1

underscoring material = new
[bracketed material] = delete

1 voter's employer or an agent of that employer, an officer or
2 agent of the voter's union or a candidate whose name appears on
3 the ballot in this election; provided that a person who assists
4 another voter pursuant to this subsection shall not assist more
5 than three voters in one election;

6 B. two election judges who are not members of the
7 same political party; or

8 C. a person assisting voters pursuant to a federal
9 voting rights consent decree. "

10 - 12 -